IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.636 OF 1994

1. The Tata Engineering Locomotive Co. Ltd., having its registered office at Bombay House, Hodi Modi Street, Fort, Mumbai - 400 001
2. Shri. Rohinesh, Residing at Amit Tata Society Murari Ghag Marg, Prabhadevi, Mumbai - 400 025. ..Petitioners.

V/s.

1. Union of India
2. The Assistant Collector of Central Excise (Refunds), Bombay-1, having his office at Meher Building,Bonmbay Garage, Chowpatty, Mumbai-400 007.
3. The Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, having his office at 3rd Floor, Jeevan Deep, Sansad Marg, New Delhi - 110 001. ..Respondents.

Mr.Prashant Bhagwati, Advocate with Mr.H.N.Vakil and Ms. Vidya Shreekumar i/b. Mulla & Mulla C.B.& C. for petitioners.

Mr.A.J.Rana, senior advocate with Mrs.S.V.Bharucha and H.V. Mehta for respondents.

CORAM : Dr.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATED : 15TH FEBRUARY, 2006.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. Heard learned counsel for the petitioners and

the respondents. In this petition, the petitioners have challenged the order passed by the Joint Secretary, Government of India dated 16th September, 1993 wherein the appeal filed against the Order-in-Original dated 8/2/93 has been rejected.

2. In the present case, the dispute pertains to the refusal on part of the respondents to grant duty rebate. It is not in dispute that the petitioners had paid central excise duty on the chassis manufactured and cleared by them for body building. It is also not in dispute that after the body building on the chassis supplied by the petitioners, motor vehicle comes into existence and the said motor vehicle was also cleared on payment of the central excise duty on body building activity and thereafter, the said body built motor vehicles have been exported.

3. On an application made by the petitioners seeking rebate of duty paid on the chassis, the competent authority by its Order-in-Original dated 3/9/1991 rejected the claim inter alia on the ground that the goods exported were motor vehicles and not the chassis. It was further held that the petitioners had cleared the chassis to body building and after the process of body building, the identity of the chassis was completely lost and a completely new product had

emerged and, therefore, in the absence of any duty paying documents, it was not possible to establish from the shipping bills that the very same chassis manufactured by the petitioners have ben exported.

4. Being aggrieved by the said order, the petitioners preferred an appeal before the Collector of Customs (A) but the same was dismissed on 8/11/1992. Further application filed by the petitioners under section 35EE of the Excise Act was dismissed by the Joint Secretary to the Government of India on 16/9/93. Challenging the aforesaid order, the present petition is filed.

5. Counsel on both sides fairly state that from the shipping bills, it is possible to ascertain the chassis number and if the same tallies with the chassis manufactured and cleared by the petitioners on payment of duty, then there should be no difficulty in granting the duty rebate to the petitioners.

6. Rule 12 of the Central Excise Rules, 1944 reads as under :-

> " RULE 12. Rebate of duty on goods exported - (1) The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of duty paid on excisable goods, if exported outside India, to such extent, and subject to such safeguards, conditions and limitations as regards the class of goods,destination, mode of transport,

and other allied matters as may be specified therein.

Provided that if the Collector is satisfied that the goods have in fact been exported (he may, for reasons to be recorded in writing, allow), the whole or any part of the claim for such rebate even if all or any of the conditions laid down in any notification issued under this rule have not been complied with."

Thus, the aforesaid Rule 12, it is clear that if the Collector is satisfied that the duty paid goods have in fact been exported, then, he may for reasons to be recorded in writing, allow the whole or any part of the claim for such rebate even if all or any of the conditions laid down in any notification have not been complied with.

7. In this view of the matter, we set aside the order passed by the Joint Secretary, Government of India as well as the adjudication order and the order passed by the Collector of Customs (A) and direct the Commissioner of Customs or any other appropriate authority to pass a fresh order on the application seeking rebate after verifying from the records regarding the duty paid chassis manufactured by the petitioners exported as motor vehicles.

8. Petition accordingly succeeds. Rule is made absolute in terms of prayer clause (a) & (b). However, there will be no order as to costs.

(Dr.S.RADHAKRISHNAN,J.)

(J. P. DEVADHAR, J.)